



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

September 24, 2021

David L. Bushnell, M.D., Chair
National Radiation Safety Committee
Department of Veterans Affairs
National Health Physics Program (115 HP/NLR)
Veterans Health Administration
2200 Fort Roots Drive
North Little Rock, AR 72114

SUBJECT: EXTENSION OF TEMPORARY EXEMPTION FROM U.S. NUCLEAR
REGULATORY COMMISSION REGULATION, TITLE 10 *CODE OF FEDERAL
REGULATIONS* 30.34(e)

Dear Dr. Bushnell:

By letter dated September 3, 2021, Agencywide Documents Access and Management System [ADAMS] Accession No. ML21252A097, the Department of Veterans Affairs (VA), the licensee, requested an extension of an exemption granted by the U.S. Nuclear Regulatory Commission (NRC) in letter dated May 19, 2020 (ML20136A508) and extended by letters dated December 15, 2020 (ML20350B610) and June 29, 2021 (ML21172A193).

The exemption was based on your letter dated April 23, 2020 (ML20118D085). In that letter, the VA requested an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(c) and license condition 19.ZB., which requires that VA conduct its program in accordance with the Letter of Understanding (LOU) between the VA and the NRC for the License No. 03-23853-01VA dated June 16, 2014 (ML14197A320). As noted above, the exemption was granted on May 19, 2020, was extended on December 15, 2020 and June 29, 2021, and expires on September 30, 2021.

In its September 3, 2021 request, the licensee stated that due to the continuing COVID-19 public health emergency (PHE), MML requirements still cannot be met in all cases without increasing the risk of exposing VA's National Health Physics Program (NHPP) staff, its permittees' staff and patients, and members of the public to the COVID-19 virus.

The licensee holds a Master Materials License (MML) which authorizes it to implement its own internal inspection and permitting programs under the conditions outlined in the aforementioned LOU. These programs are implemented by the NHPP within the VA.

The exemption provision in 10 CFR 30.11(a) states:

The Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of the regulations in this part and parts 31 through 36 and 39 of this chapter as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The license condition from which the licensee requested exemption was imposed upon the licensee by the NRC per 10 CFR 30.34(e). The regulation in 10 CFR 30.34(c) requires that the licensee confine its use of the byproduct material to the locations and purposes authorized in the license. Therefore, exemptions to the requirement in 10 CFR 30.34(c) to comply with the terms of a license may be granted pursuant to 10 CFR 30.11.

The NRC staff reviewed the request in accordance with 10 CFR 30.11(a) and finds that the criteria contained therein are met. The license condition from which the licensee is requesting exemption is license condition 19.ZB. This license condition requires that VA conduct its program in accordance with the LOU. Item 26 of the LOU states that the VA will follow NRC inspection criteria, NRC Manual Chapter (MC) 2800, Materials Inspection Program, and applicable NRC inspection procedures, during inspection activities to ensure consistency between NRC and VA inspection programs. The VA inspection program is described in an internal procedure, National Radiation Safety Committee Standard Operating Procedure 02 (NRSC SOP 02), MC 2800, in part, specifies required inspection intervals and sets forth a policy of conducting unannounced inspections.

The licensee is requesting to continue temporary exemption from Item 26 in the Inspection section of the LOU. Specifically, this includes the following items in NRSC SOP 02:

- Item 4.b: Inspection priorities - routine materials inspections, to allow VA to announce inspections in advance;
- Item 6.b: Routine inspections of permits with Priorities 1 through 3; and
- Item 7: Non-core inspections, to allow VA to extend inspection deadlines.

The licensee requested that these exemptions be extended and effective through December 31, 2021.

The licensee stated that a basis for the exemption is that some VA permittees will go outside of the required inspection intervals (including allowable variances) due to non-availability of commercial travel and VA, local, state, and national social distancing, and travel restrictions in place as a result of the pandemic. The licensee stated that these inspection requirements cannot be met without increasing the risk of exposing NHPP staff, the permittee's staff and patients, and members of the public to the COVID-19 virus.

Further, the licensee indicated that announced inspections are necessary during the COVID-19 PHE so that it can assess, before an inspection, the situation at each permittee medical facility regarding the impact of the inspection on critical pandemic-related medical care, whether appropriate personnel will be present, the level of access the inspector will have at the facility, and restrictions that are in place at the facility. The licensee stated that this request will not endanger life or property or the common defense and security and is in the public interest.

The regulation in 10 CFR 30.11(a) authorizes granting of exemptions specific to Part 30. The NRC staff has determined that the granting of the requested exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. The NRC staff, therefore, finds that the granting of the requested exemption is authorized by law. The NRC staff has also determined that the NHPP has inspected its permittee facilities in a timely manner since the inception of the MML in 2003. The timeframe proposed in this exemption extension request of completing and announcing inspections through December 31, 2021, is reasonable given the inspection history as well as the need to allow VA facilities to adequately respond to the COVID-19 PHE. Many VA facilities, especially those in

large metropolitan areas have been significantly impacted by COVID-19, up to and including the death of VA hospital staff.

The NRC also notes that, absent the requested exemption extension, the licensee may be required to take actions that may be contrary to guidance on preventing the spread of the virus that causes COVID-19. Therefore, the NRC staff finds that the requested exemption extension will not endanger life or property or the common defense and security and is otherwise in the public interest.

Based on the above findings, the NRC grants the following exemption for the specified period of time:

From the date of this exemption letter to December 31, 2021, the licensee is temporarily exempted from the portion of license condition 19.ZB. that requires the licensee to conduct its program in accordance with Item 26 of the LOU dated June 16, 2014 (ML14197A320), specifically, Item 6.b.: Routine inspections of permits with Priorities 1 through 3 and Item 7: Non-core inspections of NRSC SOP 02. Any inspections that become overdue during that period must be completed on or before December 31, 2021. In addition, the licensee is exempt from the requirement in NRSC SOP 02, Item 4.b.: Inspection priorities; routine materials inspections to announce inspections prior to their initiation for inspections initiated between the date of this exemption letter and December 31, 2021.

An environmental assessment for this action is not required, because this action is categorically excluded under 10 CFR 51.22(c)(25)(vi)(C). In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC's Public Document Room or from the NRC's ADAMS, accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html>.

If you have questions, please contact Bryan A. Parker at bryan.parker@nrc.gov or 678-828-7050.

Sincerely,



Signed by Orlikowski, Robert
on 09/24/21

Robert J. Orlikowski,
Chief Materials Licensing Branch
Division of Nuclear Materials Safety

License No. 03-23853-1VA
Docket No. 030-34325

Letter to David L. Bushnell, M.D. from Robert J. Orlikowski dated September 24, 2021.

SUBJECT: EXTENSION OF TEMPORARY EXEMPTION FROM U.S. NUCLEAR REGULATORY COMMISSION REGULATION, TITLE 10 CODE OF FEDERAL REGULATIONS 30.34(e)

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